

ORDINANCE AUTHORIZING AND PROVIDING FOR THE
ISSUANCE BY THE CITY OF FORT WAYNE, INDIANA OF
ITS ECONOMIC DEVELOPMENT REVENUE REFUNDING
BONDS SERIES 1994 (WILLOW CREEK CROSSING
APARTMENTS PARTNERSHIP PROJECT) IN A PRINCIPAL
AMOUNT NOT TO EXCEED \$4,040,000 FOR THE
PURPOSE OF REFUNDING PRIOR OBLIGATIONS OF THE
CITY ISSUED FOR THE BENEFIT OF WILLOW CREEK,
L.P., AN INDIANA LIMITED PARTNERSHIP
AUTHORIZING THE EXECUTION, DELIVERY AND
PERFORMANCE OF A LOAN AGREEMENT, AN INDENTURE
OF TRUST AND RELATED DOCUMENTS WITH RESPECT TO
SAID BONDS; AND AUTHORIZING AND PRESCRIBING
OTHER MATTERS PERTAINING TO THE ISSUANCE OF
SAID BONDS.

WHEREAS, the City of Fort Wayne, Indiana (the
"Issuer"), is authorized and empowered by Indiana Code
36-7-12, as supplemented and amended (the "Act"), to
finance any land, building or other improvement
suitable for industrial, commercial or manufacturing
enterprises for the purposes set forth in the Act; and

WHEREAS, under the Act, the Issuer is empowered to
refund revenue bonds so issued from time to time by the
issuance of additional revenue bonds of the Issuer; and

WHEREAS, Willow Creek, L.P., an Indiana limited
partnership (f/k/a Willow Creek, Ltd.) (the
"Developer"), has acquired, constructed and equipped
certain multi-family residential rental facilities (the
"Project"), located in Fort Wayne, Indiana, and the
Issuer, in order to finance a portion of the costs of
the Project pursuant to the provisions of the Act,
heretofore has issued and sold its Economic Development
Revenue Bonds (Willow Creek, Ltd. Project) Series 1985,
in the principal amount of \$4,600,000 (the "Prior
Bonds") which are now outstanding in the principal
amount of \$4,040,000; and

WHEREAS, the Developer now proposes to cause the
Prior Bonds to be redeemed and, in order to permit
interest cost savings anticipated by the Developer and
in furtherance of the purposes set forth in the Act,
the Issuer wishes to refund the Prior Bonds by the sale
and issuance of its refunding revenue bonds, and
authorizing such actions as might be required to
implement such stated intention; and

WHEREAS, this Common Council is the elected
legislative body of Fort Wayne, Indiana and is the
applicable elected representative required to approve
the issuance of the hereinafter-described Bonds within
the meaning of Section 147(f) of the Internal Revenue
Code of 1986, as amended; and

WHEREAS, the Fort Wayne Economic Development
Commission has performed all action required by it of
the Act preliminary to the adoption of this Bond
Ordinance and has approved and forwarded to this Common
Council forms of the documents referred to in the
following paragraph; and

WHEREAS, pursuant to and in accordance with the
provisions of the Act, the Issuer is now prepared to
proceed with the refunding of the Prior Bonds and to
issue and sell its Economic Development Revenue

Refunding Bonds Series 1994 (Willow Creek Crossing Apartments Project) in a principal amount not to exceed \$4,040,000 (the "Bonds") pursuant to the following:

- (a) Loan Agreement dated as of August 1, 1994 (the "Agreement") between the Issuer and the Developer, including the Promissory Note (the "Note") of the Developer issued thereunder;
- (b) Indenture of Trust dated as of August 1, 1994 (the "Indenture") from the Issuer to the trustee named therein (the "Trustee") ; and
- (c) Land Use Restriction Agreement dated as of August 1, 1994 (the "Land Use Restriction Agreement") among the Issuer, the Trustee and the Developer; and

WHEREAS, forms of the Agreement, the Indenture and the Land Use Restriction Agreement have been presented to and are before this meeting; and

WHEREAS, the Act and all documents to be signed by the Issuer provide that the Bonds shall never constitute the debt or indebtedness of the Issuer within the meaning of the constitution or statutes of the State of Indiana, and shall not constitute nor give rise to a pecuniary liability of the Issuer or a charge against its general credit or taxing powers and that the Bonds will be payable from and secured only by the revenues arising from the pledge and assignment under the Indenture and the Issuer's rights under the Agreement.

NOW, THEREFORE, BE IT ORDAINED by the Common Council of the City of Fort Wayne, Indiana, as follows:

Section 1. Pursuant to the Act, this Common Council does hereby authorize the refunding of the Prior Bonds in accordance with the terms of the Agreement and the Indenture and does hereby determine it is in furtherance of the public purposes set forth in the Act and that, therefore, providing continued financing by refunding the Prior Bonds issued to finance the Project through the issuance and sale of the Bonds is in the public interest.

Section 2. To refund in whole the outstanding principal amount of the Prior Bonds, the Issuer does hereby authorize the issuance of its revenue refunding bonds under the Act, to be designated Economic Development Revenue Refunding Bonds Series 1994 (Willow Creek Crossing Apartments Project), in a principal amount not to exceed \$4,040,000. The Bonds mature serially at the time and in the amounts set forth in the Indenture and will have a stated maturity date of August 1, 2014. Interest on the Bonds shall be payable on the first day of each month of each year, commencing September 1, 1994 at the place and in the medium provided in the Indenture. The Bonds shall bear interest at an initial rate of 6.65%, which rate may be adjusted as set forth in the Indenture but in no event may the interest rate be decreased from the initial rate of 6.65%. The Bonds shall be dated, shall be substantially in the form and in the denominations and shall have the terms and provisions (including, without limitation, provisions relating to their registration, authentication and redemption) provided for in this Ordinance and in the Indenture.

The Bonds shall be sold to Guarantee Mutual Life Company and United Farm Bureau Life Insurance Company

1 at a price of 100% of the aggregate principal amount
2 thereof plus accrued interest thereon from the date of
3 the Bonds until the date of the authentication and
4 delivery of the Bonds.

5 Section 3. The Bonds are to be issued in accordance
6 with and pursuant to the Agreement and the Indenture.
7 The Agreement provides for the issuance of the Bonds
8 pursuant to the Indenture solely for the purpose of
9 refunding the Prior Bonds. The Bonds are to be secured
10 solely and only by a pledge and assignment to the
11 Trustee of rights of the Issuer under the Agreement
12 (except certain rights to indemnification and expenses
13 of the Issuer) and the Note of the Developer. The
14 Agreement further provides for certain representations
15 and warranties by the Issuer and the Developer, for
16 certain affirmative covenants, and for remedies in
17 connection with the failure to perform certain
18 covenants thereunder. The Indenture specifically
19 provides that no provision of the Bonds shall
20 constitute the debt or indebtedness of the Issuer
21 within the meaning of any provision or limitation of
22 the constitution or statutes of the State of Indiana,
23 and shall not constitute nor give rise to a pecuniary
24 liability of the Issuer or a charge against its general
25 credit or taxing powers. Recourse on the Bonds
26 executed and delivered by the Issuer pursuant to the
27 Agreement and the Indenture may be had only against the
28 security for the Bonds as provided therein and in the
29 Agreement and the Indenture. The Land Use Restriction
30 Agreement requires the Developer to, among other
31 things, reserve 20% of the units in the Prospect for
32 Low Income Persons (as defined in the Land Use
Restriction Agreement) in compliance with the
provisions of the Internal Revenue Code of 1986, as
amended (the "Code").

Section 4. The Mayor of the Issuer is hereby
authorized, empowered and directed to execute the Bonds
by his or her manual or facsimile signatures and the
City Clerk of the Issuer is hereby authorized,
empowered and directed to attest the Bonds by his or
her manual or facsimile signature, and the official
seal of the Issuer or the facsimile thereof shall be
affixed thereto or imprinted thereon, and the Mayor and
the City Clerk of the Issuer shall cause the Bonds, as
so executed and attested, to be delivered to the
Trustee under the Indenture. In case any official
whose signature should appear on any Bonds shall cease
to be such official before the delivery of such Bonds,
such signature shall nevertheless be valid and
sufficient for all purposes, the same as if he or she
had remained in office until delivery.

Section 5. The Issuer has no obligation with respect
to the Project except as authorized hereby, and all
costs, expenses, taxes, governmental charges and fees
and charges with respect to the Project shall be paid
by the Developer.

Section 6. The Indenture is hereby approved in
substantially the form submitted to this meeting, and
the Mayor and the City Clerk of the Issuer are hereby
authorized and directed to execute, acknowledge and
deliver the Indenture with such changes therein as
shall be approved by such persons executing any such
documents, and without the need for the further
approval of this Council, their execution to constitute
conclusive evidence of such approval, and the City

Clerk is hereby authorized and directed to affix to the Indenture the corporate seal of the Issuer.

Section 7. The appointment of Norwest Bank Indiana, National Association as Trustee and Paying Agent pursuant to the Indenture is hereby approved.

Section 8. The Agreement is hereby approved in substantially the form submitted to this meeting, and the Mayor and the City Clerk of the Issuer are hereby authorized and directed to execute, acknowledge and deliver the Agreement with such changes therein as shall be approved by such persons executing such document and without the need for the further approval of this Council, their execution to constitute conclusive evidence of such approval, and the City Clerk is hereby authorized and directed to affix to the Agreement the corporate seal of the Issuer.

Section 9. The Land Use Restriction Agreement is hereby approved in substantially the form submitted to this meeting, and the Mayor of the Issuer is hereby authorized and directed to execute and deliver the Land Use Restriction Agreement with such changes therein as shall be approved by the person executing the Land Use Restriction Agreement and without the need for the further approval of this Council, the Mayor's execution to constitute conclusive evidence of such approval.

Section 10. The authorized officials of the Issuer are hereby empowered and directed to execute and deliver all other documents and instruments which may be required in connection with the issuance and delivery of the Bonds. For purposes of this section "authorized officials of the Issuer" shall mean the Mayor or the City Clerk of the Issuer.

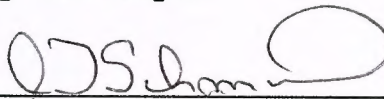
Section 11. It is the intention of the Common Council that this Ordinance shall constitute the approval of said Common Council under Section 147(f) of the Internal Revenue Code of 1986, as amended.

Section 12. If any provision of this Resolution shall be held or deemed to be or shall, in fact, be illegal, inoperative or unenforceable, the same shall not affect any other provision herein contained or render the same invalid, inoperative or unenforceable to any extent whatever; provided that no holding of invalidity shall require the Issuer to make any payments from revenues other than those derived from the Agreement and the Note in the Indenture.

Section 13. No recourse shall be had for the payment of the principal of and interest on the Bonds or for any claim based thereon or upon any obligation, covenant or agreement contained in the Agreement or the Indenture against any past, present or future member, officer or employee of the Issuer, or any incorporator, member, officer, employee, director or trustee of any successor entity, as such, either directly or through the Issuer or any successor entity, under any rule of law or equity, statute or constitution or by the enforcement of any assessment or penalty or otherwise.

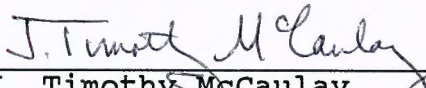
Section 14. All resolutions and regulations or parts thereof heretofore adopted or passed which are in conflict with any of the provisions of this Ordinance are, to the extent of such conflict, hereby repealed.

Section 15. That this Ordinance shall be in full force and effect from and after its passage and any and all necessary approval by the Mayor.



Council Member

APPROVED AS TO FORM
AND LEGALITY



J. Timothy McCaulay

Read the first time in full and on motion by Belmish, and duly adopted, read the second time by title and referred to the Committee on Finance (and the City Plan Commission for recommendation) and Public Hearing to be held after due legal notice, at the Common Council Council Conference Room 128, City-County Building, Fort Wayne, Indiana, on , the day of , 19 , at o'clock M., E.S.T.

DATED: 7-26-94 Sandra E. Kennedy
SANDRA E. KENNEDY, CITY CLERK

Read the third time in full and on motion by Belmish, and duly adopted, placed on its passage. PASSED LOST by the following vote:

	AYES	NAYS	ABSTAINED	ABSENT
TOTAL VOTES	<u>7</u>			<u>2</u>
BRADBURY	<u>✓</u>			
EDMONDS	<u>✓</u>			
GiaQUINTA				<u>✓</u>
HENRY	<u>✓</u>			
LONG				<u>✓</u>
LUNSEY	<u>✓</u>			
RAVINE	<u>✓</u>			
SCHMIDT	<u>✓</u>			
TALARICO	<u>✓</u>			

DATED: 8-9-94 Sandra E. Kennedy
SANDRA E. KENNEDY, CITY CLERK

Passed and adopted by the Common Council of the City of Fort Wayne, Indiana, as (ANNEXATION) (APPROPRIATION) (GENERAL) (SPECIAL) (ZONING) ORDINANCE RESOLUTION NO. S-66-94 on the 9th day of August, 19 94

ATTEST: (SEAL) Thomas P. Henry
Sandra E. Kennedy PRESIDING OFFICER
SANDRA E. KENNEDY, CITY CLERK

Presented by me to the Mayor of the City of Fort Wayne, Indiana, on the 10th day of August, 19 94, at the hour of 11:30 o'clock A, M., E.S.T.
Sandra E. Kennedy
SANDRA E. KENNEDY, CITY CLERK

Approved and signed by me this 10th day of August, 19 94, at the hour of 9:00 o'clock P M., E.S.T.
Paul Helmke
PAUL HELMKE, MAYOR

HELMKE, BEAMS, BOYER & WAGNER

COUNSELORS AT LAW

300 METRO BUILDING

HARRISON AT BERRY STREET

FORT WAYNE, INDIANA 46802-2216

TELEPHONE (219) 422-7422

FACSIMILE (219) 422-8764

July 23, 1994

WALTER P. HELMKE

R. DAVID BOYER

ROBERT A. WAGNER

J. TIMOTHY MCCAULAY

DANIEL J. BORGMANN

TRINA GLUSENKAMP GOULD

WALTER E. HELMKE
(1901-1976)

GLEN J. BEAMS
JOHN G. REIBER
OF COUNSEL

To the Members of Common Council:

S-54-07-20

Enclosed please find Special Ordinance -94- . This is an Ordinance to authorize the issuance of refunding (refinancing) Revenue bonds for Willow Creek Crossing Apartments Partnership to allow them to lock in a long term favorable interest rate on their financing instead of staying on a higher floating rate at a time of increasing interest rates.

The ordinance approves the financing and authorizes the execution of the necessary documents. This bond issue is a limited obligation issue and does not impact the tax rate or the city's bonding capacity.

A failure to pass the ordinance would cause the borrower to face increasing interest expenses. This borrower has historically maintained an occupancy of over 40% low income residents more than twice the federal requirements. Higher interest rates could impact on the borrower's ability to provide this service.

Very truly yours,

CITY OF FORT WAYNE ECONOMIC
DEVELOPMENT COMMISSION


R. David Boyer,
Associate City Attorney

RDB:alc
Enclosure

DIGEST SHEET

TITLE OF ORDINANCE: ORDINANCE AUTHORIZING AND PROVIDING FOR THE ISSUANCE BY THE CITY OF FORT WAYNE, INDIANA OF ITS ECONOMIC DEVELOPMENT REFUNDING REVENUE BONDS SERIES 1994 (WILLOW CREEK CROSSING PARTNERSHIP PROJECT) IN THE PRINCIPAL AMOUNT OF \$4,040,000.00 FOR THE PURPOSE OF REFUNDING PRIOR OBLIGATIONS OF THE CITY ISSUED FOR THE BENEFIT OF WILLOW CREEK LTD. AUTHORIZING THE EXECUTION, DELIVERY AND PERFORMANCE OF A LOAN AGREEMENT, AN INDENTURE OF TRUST AND RELATED DOCUMENTS WITH RESPECT TO SAID BONDS; AND AUTHORIZING AND PRESCRIBING OTHER MATTERS PERTAINING TO THE ISSUANCE OF SAID BONDS.

DEPARTMENT REQUESTING ORDINANCE: Economic Development

SYNOPSIS OF ORDINANCE: This Ordinance enables a refunding (refinancing) of a 1985 Economic Development Revenue Bond issue reducing the principal amount from \$4,600,000.00 to \$4,040,000.00 at market rates.

EFFECT OF PASSAGE: Willow Creek Crossing partnership will be enabled to secure updated financing at current market rates.

EFFECT OF NON-PASSAGE: Refinancing will fail.

MONEY INVOLVED (DIRECT COSTS, EXPENDITURES, SAVINGS): None.

ASSIGNED TO COMMITTEE (PRESIDENT): _____

BILL NO. S-94-07-20

REPORT OF THE COMMITTEE ON
FINANCE
CLETUS R. EDMONDS - DONALD J. SCHMIDT - CO-CHAIR
ARCHIE L. LUNSEY
DAVID C. LONG

WE, YOUR COMMITTEE ON FINANCE TO WHOM WAS

REFERRED AN (ORDINANCE) (~~RESOLUTION~~) Willow Creek Crossing
Apartments Partnership Project not to exceed \$4,040,000

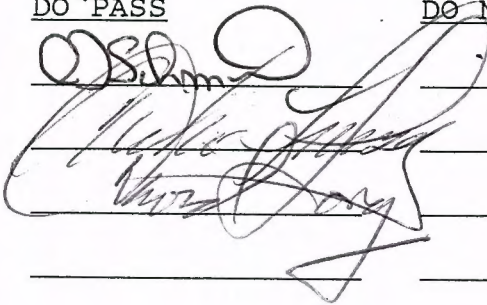
HAVE HAD SAID (ORDINANCE) (~~RESOLUTION~~) UNDER CONSIDERATION
AND BEG LEAVE TO REPORT BACK TO THE COMMON COUNCIL THAT SAID
(ORDINANCE) (~~RESOLUTION~~)

DO PASS

DO NOT PASS

ABSTAIN

NO REC

DATED: 8-9-94

Sandra E. Kennedy
City Clerk